IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO: 25148 of 2004

Between:

M. Venkata Rami Reddy, S/o. Obul Reddy,
1-31-5, RTC bus Stand Road, Pulivendula, Kadapa District.

... PETITIONER

AND

1 The Commissioner of Prohibition & Excise, Hyderabad.
2 The Prohibition & Excise Superintendent, Kadapa.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ or order or direction more particularly one in the nature of writ of Mandamus holding that the action of the 2nd respondent in realizing the bank guarantee amount of Rs. 2,00,000/- from D.C.C. Bank, Pulivendula Branch, Kadapa District, furnished by the petitioner vide proceedings Rc.No.B/98,dt. 26.11.1998 is illegal, invalid and against the Rules and consequently direct the respondents to refund the amount of bank guarantee amount to the petitioner.

Counsel for the Petitioner: MR.D.KODANDARAMI REDDY
Counsel for Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

This writ petition is filed seeking Mandamus declaring the action of the second respondent in realizing the bank guarantee of
Rs. 2,00,000/- furnished by the petitioner, as illegal, invalid and against the rules, and for a consequential direction to the respondents to refund the bank guarantee to the petitioner.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Prohibition & Excise for the respondents.

3. Petitioner, owner of M/s. Hari Hara Wines, Pulivendula Town, Kadapa District, is a license holder for Indian Liquor/Foreign Liquor and Beer for the year 1998-99, and he is running the said business in the premises bearing No. 1/31-5, R.T.C. Bus-stand, Pulivendula, Kadapa District. The petitioner states that he had paid Rs.2,00,000/- in two installments towards licence fee and furnished Rs. 2,00,000/- as bank guarantee. While he was running the said business, the petitioner states that the Prohibition & Excise Superintendent, Kadapa, suspended his license on the ground that he was selling non-duty paid liquor unauthorizedly, and subsequently, it was cancelled. While suspending the licence, a case in Crime No.225/97-98 under Sections 8 (b) read with 34 (a) and Section 36 (b) of the A.P. Excise Act, 1968 was also registered against him and three others, in Pulivendula Excise Police Station, in which the petitioner is arrayed as A-4. The petitioner states that A-2 and A-3 in the said crime, which was registered as C.C. No. 2047 of 1998, were discharged even before commencement of trial, by the learned Special Magistrate of First Class, Kadapa, on 18-02-1999, and the petitioner along with A-1, who were tried of the offence charged, were acquitted by the Court on 05-05-1999.

4. Now the grievance of the petitioner in this writ petition is pursuant to the cancellation of his licence, the Prohibition & Excise Superintendent, Kadapa, without notice to him, realized the bank guarantee, which was given for the purpose of security for the license amount. According to the learned counsel for the petitioner, the Prohibition & Excise Superintendent is empowered to realize the bank guarantee only in the event of the licencee not paying the license fee to the Excise Department. He submits that the learned Special judicial Magistrate while acquitting the petitioner and another of the charges leveled against them in the criminal case, gave a direction to the respondents to return the duty paid liquor to the petitioner. As the licence of the petitioner was cancelled because a criminal case was registered against him, the learned counsel for the petitioner submits that in view of his acquittal in the said criminal case, he is entitled for refund of the amount of

Rs.2,00,000/-, which he has furnished as bank guarantee. He thus prays that the action of the respondents in realizing the bank guarantee, is illegal and arbitrary, and prays for a direction to the respondents to refund the same.

5. The learned Government Pleader for Prohibition & Excise for the respondents submits that after the acquittal of the petitioner in the criminal case, he neither approached the respondents seeking refund of the bank guarantee furnished by him nor made any representation in that regard.

6. Inasmuch as the petitioner after his acquittal in the criminal case, neither approached the respondents nor made a representation seeking refund of the bank guarantee, and has approached this Court directly, without expressing any opinion on the merits of the matter, I deem it appropriate to dispose of the writ petition with the following direction:

The petitioner is at liberty to make a representation to the Prohibition and Excise Superintendent, Kadapa seeking refund of the bank guarantee having regard to the fact that he was acquitted in the criminal case. On such representation being made, the Prohibition and Excise Superintendent, Kadapa, shall consider and dispose of the representation and pass appropriate orders thereon, in accordance with law.

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N.V. RAMANA, J

April 25, 2005

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy to. –

1 *The Commissioner of Prohibition & Excise, Hyderabad.*
2 *The Prohibition & Excise Superintendent, Kadapa Dist.*

Two C.C. s to the G.P. for Prohibition & Excise, High Court of A.P.,

Hyderabad (OUT)

Two C.D. Copies.

*Form-NIC-OGS/WP {**JGK**}*